



159141

Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: SRS Technologies

File: B-277366

Date: July 30, 1997

Alan M. Grayson, Esq., and Laura J. Mann, Esq., Alan M. Grayson & Associates, for the protester.

Richard J. Webber, Esq., Arent, Fox, Kintner, Plotkin & Kahn, for Hernandez Engineering, Inc., an intervenor.

John E. Lariccia, Esq., Department of the Air Force, for the agency.

Scott Riback, Esq., and John Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest based on alleged violation of Procurement Integrity Act is untimely where (1) protester initially advised agency of alleged violation within 14 days; (2) agency advised protester on same day that it believed its actions were proper; and (3) protester did not file protest at General Accounting Office within 10 days after receiving notice of agency's position.

DECISION

SRS Technologies protests the actions of the Department of the Air Force in connection with request for proposals (RFP) No. F04684-97-R-0007, for ground systems safety analysis services at Vandenberg Air Force Base. SRS challenges the proposed award to Hernandez Engineering, Inc. (HEI) on the basis that the agency improperly made SRS's proprietary information available to HEI and other firms prior to the closing date for receipt of proposals.

We dismiss the protest as untimely filed.

The RFP, issued on February 20, 1997, advised prospective offerors that there was a "reading library" available for firms to use in preparing their proposals. According to the protester, it became aware on March 7 that its allegedly proprietary information—specifically, a copy of its 1992 contract for the same requirement—was available in the reading library for all competitors to review; also on March 7, the protester observed that representatives of the awardee had been to the reading library and presumably had reviewed the information at issue. SRS contacted the cognizant contracting officer's technical representative (COTR) on March 10 and conveyed its view that the materials in the reading library were proprietary and had been marked as such, and that their release was therefore improper.

The COTR advised SRS on March 10 that the contracting officer believed it was proper to release the materials. Without further discussion of the matter, SRS submitted its proposal on April 3. Thereafter, on June 16, the agency advised SRS that it had selected HEI as the apparent successful offeror. SRS protested the proposed award to our Office on June 26, maintaining that the agency improperly had released SRS's allegedly proprietary information and had thereby afforded HEI an improper competitive advantage in violation of the Procurement Integrity Act (the Act), 41 U.S.C.A. § 423 (West Supp. 1997), and that HEI also had violated the Act by receiving the information.

Both our Bid Protest Regulations and the Act require--as a condition precedent to our considering the matter--that a protester have reported the alleged violation of the Act to the contracting agency within 14 days after becoming aware of the information or facts giving rise to the alleged violation. 41 U.S.C.A. § 423(g); 4 C.F.R. § 21.5(d) (1997). The 14-day reporting requirement affords the agency an opportunity to investigate alleged improper action during the conduct of an acquisition and, in appropriate circumstances, to take remedial action before completing the tainted procurement. See 41 U.S.C.A. § 423(e)(3).

SRS complied with this requirement by advising the agency of the alleged violation on March 10. SRS then was advised on that same day that the agency believed the disclosure of the firm's 1992 contract was proper. Upon receipt of this notice, SRS was fully aware of all information necessary to formulate its protest allegations. SRS therefore was required to file its protest concerning the alleged violation of the Act in our Office within 10 days after March 10. 4 C.F.R. § 21.2(a)(2). We note that application of our timeliness rules here serves the policy objective of the Act's 14-day reporting requirement discussed above. Since SRS did not file until June 26, well after the 10-day deadline, its protest is untimely and will not be considered.

SRS contends that it was not required to protest until it learned the awardee's identity since, until that time, it did not know that a party which had received the information would be in line for award. This argument is without merit. The alleged violation of the Act is the agency's disclosure of the 1992 contract, which allegedly would provide other offerors with an improper competitive advantage over SRS. Once SRS learned of this disclosure, it was required to promptly pursue its protest grounds arising from it (after reporting it to the agency); it did not have the option of permitting an allegedly tainted procurement to proceed to award, and then protesting only upon learning that award had been made to another offeror.

The protest is dismissed.

Comptroller General
of the United States